
(1996) 03 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 27906 of 1993

Marian Education Trust (Regd.), Bangalore

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14

Citation : (1996) 3 KarLJ 495

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. Heard Sri H.S. Jois, learned Senior advocate, assisted by Sri Leelakrishnan, learned Counsel for the petitioner and Sri N.B. Vishwanath, learned H.C.G.P. for Respondent 1. I have also heard Kum. Regina Mary, learned Counsel appearing on behalf of respondent-2, University.

2. Brief facts of the case are that the petitioner claims to be an educational trust belonging to the minority community of Christians; in order to provide educational facilities to the members of the minority community and general public, petitioner decided to start and run a college with a view to impart education in B.Ed. Degree course and it built up the infrastructure by arranging classes in the R.T.C. Girls High School, Fraser Town, Bangalore; thereafter, it also moved an application on 25-10-1982 seeking requisite permission, true copy of which the petitioner annexed as Annexure-A. The petitioner's case is that after local inspection, etc., respondent 2 expressed satisfaction about the arrangements of the petitioner, but, respondent 1, State Government refused to grant permission on the ground that it has put a ban for grant on permission to start or to run B.Ed. colleges in the State during VIII 5 Year Plan. The petitioner made representation to the Government pointing out that certain other institutions have been granted permission. That after having waited for reasonable time and having received no reply, petitioner filed a writ petition No. 18698 of 1990 praying for a direction to the authorities to consider his application for grant of permission to start and run B.Ed. College and this Court issued a direction by its order dated 16-10-1990 that the application of the

petitioner for grant of permission be disposed of within two months from the date of receipt of the order of this Court. The petitioner's further case is that, in anticipation of grant of permission, the petitioner had started running of the College and in the first batch, the petitioner got 61 students admitted to B.Ed. course. Later on, due to lapse of time and total inaction on the part of the authorities, many students left and only 10 students remained. Thereafter, petitioner filed another Writ Petition No. 12251 of 1992 praying for an issue of a mandamus directing the authorities to consider his application to start and run B.Ed. college from the year 1991-92. In this course of history of litigation, it may be mentioned that lastly, writ petition No. 29563 of 1992 was filed with a prayer to direct the authorities to conduct special examination for the said 10 students and to declare their results. Petitioner's case is that, by order dated 18-4-1992, this Court issued a direction to conduct special examination for 10 students and to declare their results, by order dated 18-12-1992, the Government rejected the petitioner's application for grant of permission to start and run B.Ed. college on the ground that a policy decision has been taken that during the VIII 5 Year Plan, no permission shall be granted in favour of any institution. The petitioner annexed the copy of the order dated 18-12-1992 as Annexure-G to the writ petition. Feeling aggrieved by the order dated 18-12-1992, the petitioner filed this writ petition under Article 226 of the Constitution of India.

3. Counter affidavit to this petition has been filed. As I have mentioned earlier, I have heard learned Counsel for the parties.

4. Learned Senior Advocate submitted that the order dated 18-12-1992 is hit by Article 30; perusal of para 4 of the Center affidavit along with para 1 of the writ petition, would show that the petitioner's case that it is a minority institution and it had started B.Ed. college has not been denied by the opposite party No. 1 and as there is no specific denial of the petitioner's allegation that it is a minority institution, it should be taken as a minority institution which had started a new college. Learned Counsel further argued that right to establish and administer educational institution has been conferred on the minorities as a fundamental right and this is a right without any restriction; it may be said to be an absolute right within the four walls of the Constitution. Learned Counsel submitted that as such, the Government should have itself granted a permission or recognition to the petitioner's institution; infact, the Government should have made recommendation for affiliation and not for permission to start B.Ed. college.

5. On behalf of the opposite parties, it has been contended that if the petitioner has a right to run an institution, then, there is no question of seeking permission to start an, institution and the application was misconceived. Learned Counsel Sri N.B. Vishwanath, further submitted that in view of the subsequent developments, i.e., in view of the legislation with respect to teachers education, the situation is now changed. He submitted that under the National Council for Teacher Education Act, 1993, which came into force on 17-8-1995, the proper authority to grant recognition to colleges relating to B.Ed. course or teachers

education, is the Council or the Body or the Regional Committee concerned as mentioned under Section 14 of the above 1993 Act. He further submitted that under Section 14 of the Act, the affiliation may be granted where recognition has been granted; there is a complete procedure in that regard under the Act and therefore, proper course for the petitioner, even though it is a minority institution, is to move an application before the competent authority under the National Council for Teacher Education Act, 1993. Learned Counsel invited my attention to Section 16 of the Act.

6. I have applied my mind to the contentions raised by learned Counsel for the parties. As regards the first question whether the petitioner is a minority institution or not, it will suffice to say that the petitioner had made an allegation in para 1 of the petition to that effect and that B.Ed. college was started by a minority institution belonging to Christians. This allegation has not been denied either expressly or by necessary implication in the counter affidavit and as such, it is to be taken as an admitted fact and position that institution in question had been started by the petitioner belonging to a minority community. No doubt, Article 30 of the Constitution confers an absolute right on the minority community to establish and, to administer educational institution, based on religion or language, of their choice. When I use the words "absolute right", I must make it clear that, it means, an absolute right within the four corners and four walls of the Constitution. I mean to say that the minority institution if started, is not entitled to have a discriminatory provisions amongst the members of the community by creating a wall on the ground of rich and poor, that richer may get admission and poorer may not. So, so far as the absolute right of the community is concerned, it is within the four corners of the Constitutional provisions. So, institution could be started without seeking permission. It has been held in *J.P. Unni Krishnan and Others v State of Andhra Pradesh and Others*, AIR 1993 SC 2178, case as well as in the case of *Ahmedabad St. Xaviers College Society and Another v State of Gujarat and Another*, AIR 1974 SC 1389, that fundamental right to establish an educational institution does not carry with it the right to recognition or right to affiliation. No doubt, recognition is the cell of effective running of the institution. But, recognition or affiliation does not amount to denial of running a school; subject to the provisions of regulating recognition or affiliation, minority community which starts a school, is entitled to claim recognition from the authority competent to grant. In the present case, the position of law now appears to be that the National Council for Teacher Education Act, 1993, (Act No. 73 of 1993), which has received the assent of President of India on 29-12-1993, had been published in the Gazette dated 30-12-1993; under Section 3(1) of the Act, Government appointed the National Council for Teacher Education with immediate effect vide notification dated 17-8-1995. Section 14 of the Act reads as under:

"14(1) Every institution offering or intending to offer a course of training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such

form and in such manner as may be determined by regulations. Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under subsection (1) shall be such as may be prescribed.

(3) On receipt of an application by the region Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,- (a) If it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratories and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or (b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing.

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4),- (a) grant affiliation to the institution where recognition has been granted; or (b) cancel the affiliation of the institution, where recognition has been refused".

Section 15 of the Act deals with the matter of permission for a new course or training by recognised institution. It reads as under:

"15(1) Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) The fees to be paid along with the application under sub-section (1) shall be

such as may be prescribed.

(3) On receipt of an application from an institution under sub-section (1), and after obtaining from the recognised institution such order particulars as may be considered necessary, the Regional Committee shall,- (a) if it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulation, or (b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing permission to such institution, for reasons to be recorded in writing. Provided that before passing an order refusing permission under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

(4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under sub-section (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government".

Section 16 deals with the matter of affiliation and provide is that affiliating body to grant affiliation after recognition or permission by the council. It reads as under:

"16. Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,- (a) grant affiliation, whether provisional or otherwise, to any institution, or (b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution.

unless the institution concerned has obtained recognition from the Regional Committee concerned, under Section 14 or permission for a course or training under Section 15".

7. A reading of these provisions show that the provisions of this Act will operate in the matters of recognition and affiliation over and above the provisions of any other Act. Section 16 provides that" notwithstanding anything provided in any other law for the time being, with effect from after the appointed day, no institution which has not been granted recognition by the Regional Committee under Section 14 or permission for a course or training under Section 15, shall be granted affiliation provisional or otherwise nor shall hold examination whether provisional or otherwise for a course or training conducted by the institution. This section is putting the control on the power of granting affiliation and that affiliation cannot be granted by examining body unless the institution concerned has been recognised by the Regional Committee under Section 14 or has been permitted to be run under Section 15. This being the position of law under Sections 14, 15 and 16 of the National Council for Teacher Education Act, it

would be open for the petitioner to move his application under Section 14 of the Act or under Section 15 of the Act as the case may be, before the competent authority or the Regional Committee and the question of granting affiliation will arise only after the recognition or permission has been granted. This National Council for Teacher Education Act, 1993, has been enacted by the Parliament under Entry No. 25 of the concurrent list of VII schedule. This being a special law with reference to the education of the teachers, shall have a precedence in operation in case of a conflict of the State law. So, the recognition to such institutions can be granted not by the State Government but by the Regional Committee under the Central Act and no affiliation can be granted by the University unless the institution seeking affiliation has obtained a recognition from the Council. When I so opined, I find support from the view expressed by brother G.C. Bharuka, J., of this Court in the case of Amrith Educational and Cultural Society, Shanthinagar, Bangalore and Another v State of Karnataka and Another, 1996(3) Kar. L.J. 272.

8. Thus, considered, present writ petition has become infructuous. Subject to the observations made above, the writ petition is hereby dismissed. It is open for the petitioner to move an application under Section 14 of the National Council for Teacher Education Act, 1993, within a period of two months from today. The authorities shall consider the said application. The petitioner may be entitled to the benefit of the proviso to Section 14.

9. Sri N.B. Vishwanath, learned H.C.G.P., is permitted to file memo of appearance.